



Appeal Decision

Site visit made on 4 November 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 November 2025

Appeal Ref: APP/F4410/X/25/3370086

Flats 6-9, 114 Bentley Road, Bentley, Doncaster DN5 9QW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development ("LDC").
 - The appeal is made by Mr Shane Miller against the decision of the City of Doncaster Council.
 - The application ref 25/00725/CPE, dated 26 March 2025, was refused by notice dated 3 June 2025.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which an LDC is sought is described as "Certificate of Lawful Development/Use for the existing flats numbers 6-9 to the rear of 114 Bentley Road".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated on the appeal form that they have submitted an appeal under s192 of the 1990 Act but has described the development as a "*Certificate of Existing lawful use*". The evidence supplied by both parties is in reference to the development being existing and therefore s191 is the relevant section of the 1990 Act. I have therefore determined the appeal on this basis.
3. The Council's decision notice refers to the application dated 7 April 2025. However, the application form is dated 26 March 2025. I have therefore used the latter date in the banner heading above.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC for existing flats 6-9 to the rear of 114 Bentley Road was well-founded.

Reasons

Background

5. No 114 is a three-storey building fronting onto Bentley Road that consists of two shop units to the ground floor, with flats above. To the rear of this building, accessed via a ground floor undercroft, there is a courtyard surrounded on three sides by buildings. Facing into the courtyard there is a two-storey building with two front doors, one identified as "3" and the other identified as "4", and an attached single storey building with a flat roof has a front door identified as "5".
6. The appeal concerns a part single storey, part two-storey building that also faces into the courtyard to the rear of No 114. As I saw during my site visit, the building has been converted into four individual flats that each have all the facilities

required for day-to-day living. Flats 6, 7 and 8 (formerly flats 5a, b and c) are accessed via individual lockable front doors from a shared lockable entrance door and internal hall. Flat 9 (formerly flat 5d) is accessed via its own front door from the courtyard. The four flats were occupied at the time of my site visit.

7. The appellant has provided ground and first floor floorplans of flats 6-9. However, I noted during my site visit there were some discrepancies with these drawings. The downstairs WC accessed from the shared hallway now contains a shared storage area and washing machine rather than a WC. Flat 6 has one room used as a kitchen/bedroom with a separate bathroom. The separate bedroom shown for flat 6 is now part of flat 9 and has no windows. The bedroom and lounge of flat 7 and the bedroom and store of flat 9 are served by a roof light, rather than windows. There is no window to the kitchen in flat 8 and the staircase up to this flat has been extended into the corridor shown on the drawing as providing access to flat 6's missing bedroom.

Assessment

8. The burden of proof in an LDC application is on the appellant. There shall be no good reason to refuse an LDC provided the appellant's evidence, which need not be corroborated by independent evidence, is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probability.
9. For the appeal to succeed, the appellant must show that no enforcement action could be taken against the use and that it does not contravene any requirements of an enforcement notice ("EN") in force. I have not been advised there is an EN in force on the appeal site and therefore, the latter requirement is met.
10. Turning to the first requirement, the appellant's case is that enforcement action could not be taken because the time for taking it has expired. Consequently, to be lawful, the change of use of the building to four flats must have been undertaken more than 4 years prior to the date of the application for an LDC.

Planning History

11. The evidence surrounding the date on which the appellant became the owner of No 114 is vague and imprecise with statements including: the appellant and his business partner *"have been the legal owners of this property since 2013/2014"*; *"On purchase of the property in 2014..."*; and *"I purchased the property in or around February 2014"*.
12. The appellant also asserts that at the time they purchased the property, it consisted of a shop to the ground floor, a flat above and 4 flats to the rear. It is unclear from the evidence before me if these 4 flats were within the appeal building or elsewhere within No 114. The appellant states that planning permission was subsequently granted in 2014 for 5 more flats [my emphasis]. This would equate to a total of 10 flats at No 114. However, the evidence before me suggests there are only 9 flats.
13. Planning permission¹ was granted on 16 April 2014 for the conversion of the existing first floor flat and ground and first floor storage area of No 114 to four flats. It also included the erection of an external staircase to the rear and alterations to the building's rear elevation.

¹ Planning Ref 14/00394/FUL

14. I have a copy of drawing WTB-004 that is titled "*Conversion to Create Four Apartments. Proposed*" and includes the appellant's name as the client. The Design & Access Statement for planning permission 14/00394/FUL states at paragraph 2.2.1: "*The layout of the apartments are as shown on Plan Ref No. WTB-004. Three of the apartments will have 1 bedroom, and one apartment will have two bedrooms*". This description supports the layout of flats 1-4 shown on drawing WTB-004 and approved under planning permission 14/00394/FUL.
15. A subsequent planning permission² was granted on 19 May 2014 for the creation of an additional apartment at ground floor level at No 114. The Council has provided a copy of the approved drawing which shows the conversion of the single storey flat roofed building whose front door is currently numbered "5". The drawing includes the appellant's name as the client.
16. Consequently, planning permission was granted for five flats at No 114 in April/May 2014 that did not involve the appeal building (flats 6-9).
17. The approved drawing for planning permission 14/00728/FUL includes annotations to most of the ground floor rooms of the appeal building that state "*storage*". The appellant asserts that the draughtsman did not enter this building and had assumed they were storage space so labelled the floorplans as such. However, I am unclear how the draughtsman drew the internal configuration of the rooms of this building if they did not enter them.
18. In addition, the decision notice of planning permission 14/00394/FUL includes an informative that states, "*The outbuildings to the rear of the premises adjacent to the proposed flat 5 shall only be used for storage in connection with the retail uses. Any further use will require planning permission*". A similarly worded informative is included on the decision notice of planning permission 14/00728/FUL. Furthermore, the Officer Report for the earlier planning permission states: "*The rear part of the building that adjoins flat 5 will remain as ancillary storage to the shops as per its original use*". The Council's evidence therefore is clear that the appeal building was used for storage purposes rather than flats at the time the planning permissions were granted.

Street Name and Numbering & Photographic Evidence

19. I have been provided with a copy of an email from the Council's Street Name and Numbering department dated 15 October 2014. The email states that No 114 had been converted into two shop units and five flats and it provides the numbering for these properties. The email also refers to a plan but does not identify a drawing number or title.
20. I have been provided with a drawing that the appellant asserts was included with the email from the Council's Street Name and Numbering department and identifies the five flats ("*the annotated drawing*"). The annotated drawing indicates that the appeal building, together with the single storey flat roofed building granted planning permission under 14/00728/FUL, comprises flat 5. The appellant asserts that it was this building that was registered as flat 5.
21. The appellant describes flat 5 having a shared entrance and a shared corridor. This is depicted on the annotated drawing. The appellant asserts that they then

² Planning Ref 14/00728/FUL

numbered the doors to the four flats internally as 5a, b, c and d. The annotated drawing shows 6 rooms accessed from the shared ground floor corridor and two rooms accessed from the shared upstairs landing. Therefore, it is unclear why only 4 internal doors were numbered.

22. The annotated drawing does not depict the use of each of the rooms or the facilities contained within each room, other than two shared WCs to the ground floor. Consequently, it is unclear whether the claimed flat 5 was being used as four flats or as a House in Multiple Occupation ("HMO").
23. I have been supplied with a photograph of the exterior of part of the appeal building which includes the shared front door and an adjacent window covered with a closed vertical blind. The appellant asserts that the blind was required to provide privacy to the occupants of the flat, and that the photograph was taken in April 2014. However, the photograph is undated and, it is unclear how the presence of a closed blind demonstrates that the whole of the appeal building was being used as four flats.

Tenancy Agreements

24. I have been provided with copies of two tenancy agreements: one described as *"flat 5 rear upstairs flat at 114 Bentley Road"* dated 17 March 2014 and lasting 6 months, and another for *"flat 5C 114 Bentley Road, Doncaster"* dated 5 February 2018 and lasting 6 months. The appellant asserts that they were for Mr Wild and Mr Sands, however, the signatures are illegible, and they exclude a printed name. No further tenancy agreements have been provided.
25. I have been provided with a witness statement from Mr Wild dated 19 May 2024. The statement has been countersigned, but it is unclear whether they are a solicitor or a commissioner for oaths. Notwithstanding this, Mr Wild says he was a tenant of flat 8 (formerly flat 5C) from early April 2014 until 24 June 2015. According to the submitted floorplan of the building's existing layout, flat 8 occupies the first floor of the appeal building.
26. The tenancy dates provided by Mr Wild are corroborated by both the appellant and the former managing agent in their own signed statements. However, the corresponding tenancy agreement began on 17 March 2014 and lasted 6 months. Mr Wild states that flat 8/5C formed part of the rear block of No 114. However, no further information has been supplied to identify the precise location of the flat or its internal configuration for the time Mr Wild occupied it.
27. A second witness statement has been submitted by the former managing agent of the property dated 15 December 2024. The statement has been countersigned, but no details have been provided regarding the witness other than an illegible signature. Notwithstanding this, the former managing agent states they managed No 114 from early April 2014 until *"recently"* and asserts that Mr Wild was his first tenant in flat 8/flat 5C. They also state that during their time managing the property *"flats 6-9 were let out over the years"*. However, no further information has been provided regarding tenants or dates.
28. The evidence suggests that parts of the appeal building have been occupied for residential purposes. However, the evidence is limited to flat 8/5C and a flat described as *"flat 5 rear upstairs"* for two separate limited periods in 2014/15 and in 2018. The appellant states that documentation relating to flats 6-9 was damaged

when their offices and storage archives were flooded in November 2019. This is detailed within the appellant's signed statement and includes a photograph of an undisclosed building surrounded by floodwater.

29. I recognise the appellant's dilemma on this matter, however, the limited number of tenancy agreements submitted, and the information supplied within the signed statements do not demonstrate that the four flats have been occupied for a continuous period of more than 4 years prior to the date of the LDC application.

Council Tax

30. In a letter dated 11 February 2024, the appellant states that they and their business partner previously paid the annual Council Tax bill for the block as one payment. They state it was the Council Tax office that changed it to individual bills in each tenant's name(s). Further evidence from the appellant states that in Summer 2022, the Council Tax office changed the flat numbers from flats 5a, b, c and d to flats 6-9 as there was confusion over who was liable for Council Tax on each flat. However, Council Tax records show that flats 6-9 were registered in February 2023.
31. I have been provided with Council Tax records that demonstrate that Council Tax was registered on flats 1-5 of No 114 from 2014. This could support the appellant's assertion that the Council Tax on flat 5 was being paid for by themselves and their business partner on the whole block as depicted in the annotated drawing. However, I have not been provided with Council Tax statements by the appellant to confirm payment. Even if evidence was provided, one Council Tax payment for the whole of flats 5a, b, c and d would suggest that flat 5 was a House in Multiple Occupation rather than four individual flats.
32. The evidence supplied regarding Council Tax is therefore imprecise, unclear and ambiguous. It also fails to demonstrate that the four flats have been occupied for a continuous period of more than four years prior to the date of the LDC application.

Conclusion

33. Taking all these factors together, I find that the evidence presented by the appellant is not sufficiently clear, precise or unambiguous to show that on the balance of probability, residential use of the building to four flats began more than four years prior to the date of the application and has been continuous thereafter.
34. For the reasons given above, I conclude that the Council's refusal to grant an LDC for the existing flats numbers 6-9 to the rear of 114 Bentley Road is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

A Berry

INSPECTOR